



Billing Code 6570-01

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Extension Without Change of an Existing Collection; Comments Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Commission announces that it intends to submit to the Office of Management and Budget (OMB) a request for a three-year extension without change of the existing recordkeeping requirements under its regulations. The Commission is seeking public comments on the proposed extension.

DATES: Written comments on this notice must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments should be sent to Bernadette Wilson, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street, NE, Washington, DC 20507. As a convenience to commenters, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile (“FAX”) machine. This limitation is necessary to assure access to the equipment. The telephone number of the fax receiver is

(202) 663-4114. (This is not a toll-free number). Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663-4070 (voice) or (202) 663-4074 (TTD). (These are not toll-free telephone numbers.) Instead of sending written comments to EEOC, you may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments. All comments received through this portal will be posted without change, including any personal information you provide, except as noted below. The EEOC reserves the right to refrain from posting comments, including those that contain obscene, indecent, or profane language; that contain threats or defamatory statements; that contain hate speech directed at race, color, sex, national origin, age, religion, disability, or genetic information; or that promote or endorse services or products. All comments received, including any personal information provided, also will be available for public inspection during normal business hours by appointment only at the EEOC Headquarters Library, 131 M Street, NE, Washington, DC 20507. Upon request, individuals who require assistance viewing comments will be provided appropriate aids such as readers or print magnifiers. To schedule an appointment, contact EEOC Library staff at (202) 663-4630 (voice) or (202) 663-4641 (TTY). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Kathleen Oram, Acting Assistant Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 131 M Street, NE, Washington, DC 20507, (202) 663-4681 (voice) or (202) 663-4494 (TTY), or Erin Norris, Senior Attorney, Office of Legal Counsel, Equal Employment Opportunity Commission, 129 W. Trade Street, Charlotte, NC, 28202, (704) 954-6491 (voice). Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663-4191 (voice) or (202) 663-4494 (TTY).

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964 (Title VII), Title I of the Americans with Disabilities Act (ADA), and Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which collectively prohibit discrimination on the basis of race, color, religion, sex, national origin, disability, or genetic information. Section 709(c) of Title VII, section 107(a) of the ADA, and section 207(a) of GINA authorize the EEOC to issue recordkeeping and reporting regulations that are deemed reasonable, necessary or appropriate. EEOC has promulgated recordkeeping regulations under those authorities that are contained in 29 CFR part 1602 *et seq.* Those regulations do not require the creation of any particular records but generally require employers to preserve any personnel and employment records they make or keep for a period of one year. The EEOC seeks extension of the recordkeeping requirement in these regulations without change.

Pursuant to the Paperwork Reduction Act of 1995, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of Current Information Collection

Collection Title: Recordkeeping under Title VII, the ADA, and GINA

OMB - Number: 3046-0040

Description of Affected Public: Employers with 15 or more employees are subject to Title VII, the ADA, and GINA

Number of Respondents: 961,709

Number of Reports Submitted: 0

Estimated Burden Hours: 37,264 hours

Cost to Respondents: \$0

Federal Cost: None

Number of Forms: None

ABSTRACT: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), section 1007(a) of the ADA, 42 U.S.C. 12117(a), and section 207(a) of GINA, 42 U.S.C. 2000ff-6(a), require the Commission to establish regulations pursuant to which employers subject to those Acts shall make and preserve certain records to assist the EEOC in assuring compliance with the Acts' nondiscrimination in employment requirements. This is a recordkeeping requirement. Any of the records maintained which are subsequently disclosed to the EEOC during an investigation are protected from public disclosure by the confidentiality provisions of section 706(b) and 709(e) of Title VII which are also incorporated by reference into the ADA at section 107(a) and GINA at section 207(a).

BURDEN STATEMENT: The estimated number of respondents subject to this recordkeeping requirement is 961,709 employers. An employer subject to the recordkeeping requirement in 29 CFR part 1602 must retain all personnel or employment records made or kept by that employer for one year, and must retain any records relevant to charges of discrimination filed under Title VII, the ADA, or GINA until final disposition of those matters, which may be longer than one year. This recordkeeping requirement does not require reports or the creation of new documents, but merely requires retention of

documents that an employer has already made or kept in the normal course of its business operations. Thus, existing employers bear no burden under this analysis, because their systems for retaining personnel and employment records are already in place. Newly formed firms may incur a small burden when setting up their data collection and retention systems to ensure compliance with EEOC's recordkeeping requirements. We assume some effort and time must be expended by employers to familiarize themselves with the Title VII, ADA, and GINA recordkeeping requirements and explain those requirements to the appropriate staff. We estimate that 30 minutes would be needed for this one-time familiarization process. Using 2015 data from the Small Business Administration, we estimate that there are 74,528 firms that would incur this start-up burden.¹ Assuming a 30-minute burden per firm, the total annual hour burden is 37,264 hours (.5 hour x 74,528 = 37,264).

For the Commission

Dated: February 13, 2018.

Victoria A. Lipnic,

Acting Chair.

¹ Source: U.S. Small Business Administration: Statistics of U.S. Business, Release Date 1/2017. <https://www.sba.gov/advocacy/firm-size-data>. Select U.S. Static Data, U.S. Data and combines estimates from private employment, public sector, colleges and universities, and referral unions.

